

PARSONS BEHLE & LATIMER

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

LEE A. HOLLAAR AND AUDREY M.
HOLLAAR,

Plaintiffs,

vs.

MARKETPRO SOUTH, INC, a Maryland
corporation,

Defendant.

**MOTION FOR STAY OF ENFORCEMENT
OF JUDGMENT PENDING APPEAL
AND FOR
DEPOSIT OF JUDGMENT INTO COURT**

Civil No. 2:22-cv-00559-TS

Hon. Ted Stewart

Pursuant to Federal Rule of Civil Procedure 62(b) and 67, Plaintiffs Lee Hollaar and Audrey Hollaar (the “**Hollaars**”) hereby submit this Motion for Stay of Enforcement of Judgment Pending Appeal and for Deposit of Judgment Into Court (“**Motion**”) against Defendant MarketPro South, Inc. (“**MarketPro**”).

INTRODUCTION AND RELIEF REQUESTED

On January 11, 2023, this Court entered a Memorandum Decision and Order dismissing the Hollaars’ claims against MarketPro. [See Dkt. 26.] The Court subsequently awarded MarketPro \$32,366.10 in attorney fees and costs on March 6, 2023. [See Dkt. 35.] This matter is presently on appeal before the Tenth Circuit.

MarketPro has now filed a Motion for Writ of Execution seeking to seize and acquire the Hollaars' claim against them and appellate rights, effectively seeking to snuff out any risk of an adverse result before the appellate court. Accordingly, the Hollaars seek an order from the Court staying execution of the attorney fee award pending resolution of the appeal under Fed. R. Civ. P. 62(b). As security for the stay, the Hollaars seek permission to deposit the amount of the judgment with the Clerk of the Court under Fed. R. Civ. P. 67. This will adequately protect MarketPro in the event the judgment of the Court is affirmed, while also protecting the Hollaars in the event it is not.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On January 11, 2023, this Court entered a Memorandum Decision and Order dismissing the Hollaars' claims against MarketPro. [*See* Dkt. 26.]
2. On March 6, 2023, the Court awarded MarketPro \$32,366.10 in attorney fees and costs. [*See* Dkt. 35.]
3. On February 10, 2023, the Hollaars appealed the adverse ruling against them. [*See* Dkt. 30.] That appeal is presently pending in the Tenth Circuit, and is in the midst of briefing.
4. On June 15, 2023, MarketPro filed a Motion for Writ of Execution and a Motion for Hearing to Identify Judgment Debtor's Property. [*See* Dkt. 36 and 37.]
5. In the Motion for Writ of Execution, MarketPro seeks to execute upon the Hollaars' claim against MarketPro, including "all such claims and causes of action, and appeals arising therefrom." [*See* Dkt. 36.]

ARGUMENT

I. THE COURT SHOULD STAY ENFORCEMENT OF THE JUDGMENT AND ALLOW THE HOLLAARS TO DEPOSIT THE AMOUNT OF THE JUDGMENT INTO COURT.

Through its Motion for Writ of Execution, MarketPro seeks to execute upon the very claims

that are the subject of this action and a pending appeal. This tactic is available under Utah law, but has been described by the Tenth Circuit as “present[ing] a degree of discomfort.” *RMA Venture California v. SunAmerica Life Insurance Company*, 576 F.3d 1070, 1075 (10th Cir. 2009). Nevertheless, it certainly presents grounds for the Court to issue a stay of execution so this matter may be fully adjudicated on the merits and not extinguished through back-door maneuvering.

Under Fed. R. Civ. P. 62(b), a party may obtain a stay of execution by providing a bond or other security. The goal of the security requirement is to protect the judgment creditor in case the judgment debtor becomes insolvent during the pendency of an appeal. *See Miami Int’l Realty Co. v. Paynter*, 807 F.2d 871, 873 (10th Cir. 1986). By the same token, a judgment debtor who pays a judgment runs the same risk that the judgment creditor may become insolvent during the appeal, rendering the debtor unable to recover his payment if he prevails on the appeal. *See Strong v. Laubach*, 443 F.3d 1297, 1299 (10th Cir. 2006).

To protect both parties’ interests, the Court has discretion to determine appropriate security for the stay of enforcement. *See Miami Int’l Realty*, 807 F.3d at 873-74. In this case, the Hollaars ask the Court to permit deposit of the full judgment amount—\$32,366.10—with the Clerk of the Court. Deposit of the judgment with the Clerk of the Court has been recognized as adequate alternative security under Rule 62(b), as it is sufficient to protect the judgment creditor from loss while execution is stayed. *See Bennett v. Franklin Resources, Inc.*, 360 F.Supp.3d 972, 983 (N.D. Cal. 2018 (*affirmed* 778 Fed. Appx. 541)).

If MarketPro prevails on the appeal, the deposit can be released to MarketPro upon motion. If the Hollaars prevail, the funds can be returned to the Hollaars following the same procedure. This security for stay of enforcement fully protects both parties and promotes the interests of justice by allowing the merits of the case to be fully adjudicated.

CONCLUSION

Based on the foregoing, the Court should grant this Motion and stay enforcement of the judgment against the Hollaars. Instead, the Court should allow the Hollaars to deposit the amount of the judgment with the Clerk of the Court, which will provide adequate security to all parties pending resolution of the appeal.

DATED this 16th day of June, 2023.

PARSONS BEHLE & LATIMER

/s/ Alex B. Leeman

Alex B. Leeman, Esq.

Alex N. Vandiver, Esq.

Attorneys for Lee and Audrey Hollaar

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June, 2023, I caused a true and correct copy of the foregoing **MOTION FOR STAY OF ENFORCEMENT OF JUDGMENT PENDING APPEAL AND FOR DEPOSIT OF JUDGMENT INTO COURT** to be filed using the Court's e-filing service, which sent electronic notification of the filing to all counsel of record.

/s/ Alex B. Leeman
